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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,423	11/19/2003	Matthew Leroy Gomez	Gomez - BSLGCD	7767

7590

06/27/2005

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EXAMINER

FISCHMANN, BRYAN R

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/717,423

Applicant(s)

GOMEZ, MATTHEW LEROY

Examiner

Bryan Fischmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 21-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### ***Acknowledgments***

1. The Amendment filed 4-22-2005 has been entered.

### ***Specification***

2. The disclosure is objected to because of the following:

A) On page 12, the phrase "FIGS 1, 2, 3" should not appear in the title at the upper portion of the page. See Section 608.01(a) of the MPEP.

Also note that "section titles" should generally be in accordance with the titles set forth in Section 608.01(a) of the MPEP. This is not often the case in the Instant Application.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, steps of claim 37 not involving device structure, such as step "a" which involves "device structure", but instead involve "interaction" between the device and an animal carcass, such as step "b" where the bar is inserted in the large game carcass body cavity, and step "c", where the carcass is secured to the device by tie-down apparatus and other steps not involving the "structure" of the device must be illustrated, or the limitations removed from the claim. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

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prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

4. Claim 37 is objected to because of the following:

A) Claim 37 recites in subparagraph "a)" "...a manual large game carrying device of the type...".

This recited phrase is objected to, as the use of the phrase "of the type" implies that there is one or more unknown and specified "types" of carrying devices.

Recommend that the words "of the type" be deleted from the above recitation.

B) Claim 37 recites "whereby said manual large game carrying device can be easily loaded, secured, raised and transported".

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This recited phrase is objected to, as being vague and unclear. For example, what would the device be "loaded onto" and "transported by". Recommend this phrase be clarified, or deleted.

***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 21-36 are rejected under 35 USC 101 due to the following:

Claims 21 and 29 positively recites "...a human...". A "human" is non-statutory subject matter.

To overcome this rejection, the Applicant should only recite a "human" clearly within functional language, or delete the reference to "a human".

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 37 and 38 rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant regards as his invention.

A) Claim 37 recites the limitation "said upright rigid frame's substantially elongated receiving bar". There is insufficient antecedent basis for this limitation in the claim.

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B) Claim 37 recites the limitation "said large game carcass' body". There is insufficient antecedent basis for this limitation in the claim.

C) Claim 37 recites the limitation "the interior spine of said large game carcass' body cavity". There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 38, note claim 38 is dependant upon claim 37.

### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 21-26, 29-33 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Maebe, US Patent 4,506,902.

Maebe teaches a manual large game carrying device (see comments below), comprising:

a) a upright rigid frame having a substantially elongated upper receiving bar (14),

b) said upright rigid frame having a plurality of rotatable wheels (26 and 28)

releasably mounted (by disassembly) there-under,

c) a braking means (62) to controllably stop or slow said plurality of rotatable wheels (see comment below),

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d) a steering means (40) to manually control and turn one of said plurality of rotatable wheels, and

e) a plurality of points of securement (hole between 14 and 16 and hole between seat and seat frame) structurally attached (via other components) to said substantially elongated upper receiving bar,

whereby large game may be easily loaded, secured, maneuvered, and transported conveniently.

Regarding the claim 21 and 10 limitation "large game carrying device", it is noted this limitation is drawn toward "intended use" of the claimed invention. The functional recitation of intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the function or intended use, then it meets the claim. *In re Casey*, 370 F.2d 576, 152 USPQ 235, 238 (CCPA 1967). It is the Examiner's position that the prior art is capable of performing the intended use.

Once this prima facie case has been established, the burden shifts to the applicant to show that the prior art structure does not possess the functionally defined or intended use limitations of his claimed apparatus. *In re Schreiber*, 128 F.3d 1473, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997).

Regarding the claim 21 and 29 recitation of "a braking means to controllably stop or slow said plurality of rotatable wheels", note that although Maebe teaches that the braking means only "brakes" the rear wheel, and not the front wheel, that the front

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wheel will also be slowed, or stopped by the braking means, since the front and rear wheels must rotate at the same speed, in order to prevent "skidding", or "wheel slip" of the wheels.

Regarding claims 23-25 and 31-33, note that any two parts that are attached may detached or "released" with varying degrees of difficulty.

Regarding claim 36, as noted above, the "points of securement" are structurally attached to the upper receiving bar via other components.

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 27, 28, 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maebe, US Patent 4,506,902.

Maebe teaches a braking means comprising a stopping mechanism lever (64), a stopping linkage (66) and a stopping mechanism (62). Maebe teaches the braking means is to be used only on the rear wheel and not the front wheel.

However, note that it is considered within the skill level of one of ordinary skill in the art to duplicate parts. See Section 2144 of the MPEP. Note that bicycles are commonly furnished with both front and rear brakes. A front brake is advantageous in



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that it facilitates stopping of the vehicle, particularly since the "vehicle inertia" is in the forward direction.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the braking means of Maebe on the forward, as well as rear wheel.

### ***Allowable Subject Matter***

13. Claim 37 would be allowable if rewritten or amended to overcome the rejections under 35 U.S.C. 112, 2nd paragraph, and the claim objections set forth in this Office action.

14. Claim 38 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, 2nd paragraph, and the claim objections set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Reasons for Allowance***

15. The following is an Examiner's statement of reasons for allowance of newly added independent claim 37:

Claim 37 recites the limitation (as paraphrased due to claim objections and 112 2<sup>nd</sup> paragraph rejections) of a method of loading and transporting large game, comprising; providing a manual large game carrying device comprising an upright rigid frame having a plurality of rotatable wheels mounted there-under, a means for stopping or slowing said plurality of rotatable wheels, a means for steering said manual large game carrying device and a plurality of points of securement structurally attached to a substantially elongated upper receiving bar of

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said upright rigid frame, providing a large game carcass and inserting said substantially elongated upper receiving bar of said upright rigid frame of said manual large game carrying device in a large game carcass' body cavity until it rests securely on an interior spine of said large game carcass' body cavity, securing said large game carcass to said substantially elongated upper receiving bar of said upright rigid frame of said manual large game carrying device by using a tie down apparatus, raising said manual large game carrying device with said large game carcass now securely attached for quick and efficient transport. This limitation, in combination with the other limitations of claim 37, were not found in the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Examiner's Comments***

16. The amendment dated 04-22-2005 has resolved the specification, drawing and claim objections set forth on the last Office Action dated 10-07-2004.

17. The cancellation of originally filed claims 1-20 has rendered the 102 and 103 rejections of these claims moot. Applicant's comments traversing these rejections in the "Remarks" portion of the amendment have been considered, but are moot in view of the new grounds of rejection set forth in this Office Action due to the addition of new claims.

Additionally, regarding the "canceled claims", per 37 CFR 1.121, when claims are canceled, the canceled claims should not be "written out". For canceled claims, the

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claims numbers need only be listed followed by the status identifier. For example; 1-20 (canceled).

18. Regarding Applicant's request for constructive assistance for allowable claims on the last page of the amendment, note that, as mentioned above, method claim 37 would be allowable if the 35 USC 112 2<sup>nd</sup> paragraph rejections and the claim objections were overcome. Note also that Applicant would also require additional drawing figures to illustrate portions of the method not associated with the structure of the device, as set forth above.

Regarding apparatus claims 21-36, these claims stand rejected, as Applicant has failed, in the Examiner's opinion, to differentiate the claimed invention of claims 21-36 from a bicycle, or, at least the bicycle of Maebe. Further "differentiation" of the claimed game carrying device from a bicycle, such as adding limitations that the upper rigid bar extends longitudinally aft of the rearmost portion of the rear tire, that the "tie downs" are "semi-circular shaped" and directly attached to the bottom of the upper receiving bar and that there is no seat. Note that these are only "recommendations", in that a further search would be required to assure that these features are indeed novel.

Note that if Applicant wanted to add, or amend existing claims to add these features, that a Request for Continued Examination under 37 CFR 1.114 would likely be required. If Applicant is willing to receive a patent on only method claims 37 and 38, that this could likely be accomplished by an after-final amendment. Note however, that any further changes required to the after-final amendment by the Examiner by an

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Examiner's Amendment is subject to an extension of time fee, since prosecution is now closed.

19. Also, as best understood, the Applicant is prosecuting the Application *pro se*, without benefit of an attorney, or agent. While the Patent Office generally recommends a *pro se* Applicant seek the services of an attorney, or agent, which in all cases affords maximum patent protection, the Applicant seems sufficiently well versed in the matter of the prosecution of patent applications, that this recommendation is not "strongly advised".

### ***Conclusion***

20. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A) Tidwell, et al, Doyich, McWilliams, et al, Mason – teach wheeled vehicles capable of transporting game

22. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (571) 272-6694. The examiner can normally be reached on Monday through Friday from 8:30 to 5:00.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis, can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 6-19-5  
**BRYAN FISCHMANN**  
**PRIMARY EXAMINER**